

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Docket No. 16 CR 109
)	
Plaintiff,)	Chicago, Illinois
)	November 17, 2020
v.)	10:42 A.M.
)	
RALPH GARCIA,)	
)	
Defendant.)	

TRANSCRIPT OF PROCEEDINGS - SENTENCING HEARING
BEFORE THE HONORABLE ROBERT M. DOW, JR.

APPEARANCES:

For the Plaintiff: HON. JOHN R. LAUSCH, JR.
UNITED STATES ATTORNEY
BY: MR. TIMOTHY J. STURINO
ASSISTANT UNITED STATES ATTORNEY
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
tim.sturino@usdoj.gov

For the Defendant: LAW OFFICES OF JOHN LEGUTKI
BY: MR. JOHN C. LEGUTKI
53 West Jackson Boulevard, Suite 920
Chicago, Illinois 60604
jlegutki@sbcglobal.net

Also Present: MS. KELLY KWONG
United States Probation Officer

Court Reporter: KRISTIN M. ASHENHURST, CSR, RDR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 2304-A
Chicago, IL 60604
(312) 818-6549
kristin_ashenhurst@ilnd.uscourts.gov

1 (The following proceedings were had via video.)

2 THE CLERK: 16-CR-109-1, United States of America
3 versus Ralph Garcia, and this is for sentencing.

4 THE COURT: Okay. Thank you. So let me just make
5 sure Kris is still there. Kris, are you still there?

6 THE COURT REPORTER: I am. Thank you.

7 THE COURT: Okay. Great. So I can take attendance
8 off my video here. I have Mr. Sturino here for the government.

9 MR. STURINO: Good morning, your Honor.

10 THE COURT: Good morning. You're coming in loud and
11 clear. Beautiful.

12 Mr. Legutki is here for the defendant. Mr. Legutki,
13 good morning.

14 MR. LEGUTKI: Good morning, sir. How are you today?

15 THE COURT: I am well. Thank you very much. Thank
16 you for your patience.

17 Ms. Kwong is here. She's stepping in here.
18 Mr. McKechnie is retired apparently, so we'll wish him well on
19 the record and express our jealousy, but we'll also thank
20 Ms. Kwong for stepping in. Good morning.

21 PROBATION OFFICER KWONG: Good morning.

22 THE COURT: And, Mr. Garcia, good morning. Can you
23 hear us okay?

24 THE DEFENDANT: Yes, I can, your Honor.

25 THE COURT: We can hear you okay as well, so thank you

1 for your patience as well, sir.

2 Okay. Well, good morning, everybody. Is the
3 government ready to proceed today?

4 MR. STURINO: Yes, your Honor, we are.

5 THE COURT: Okay. And defense is ready to proceed as
6 well?

7 MR. LEGUTKI: Yes, sir. Thank you.

8 THE COURT: Okay. Very well. Carolyn, can you please
9 swear in Mr. Garcia?

10 THE CLERK: Sure. Mr. Garcia, can you please raise
11 your right hand?

12 (Defendant sworn.)

13 THE COURT: Thank you, Carolyn. Mr. Garcia, good
14 morning, again. And are you ready to proceed with sentencing
15 today, sir?

16 THE DEFENDANT: Yes, I am.

17 THE COURT: Okay. Great. Thank you.

18 Well, I want to start -- I want to thank Mr. McKechnie
19 in absentia for preparing the PSR. And, counsel, I think you
20 both have received a copy of Mr. McKechnie's recommendations;
21 is that right?

22 MR. STURINO: Yes, your Honor.

23 MR. LEGUTKI: Yes, sir.

24 THE COURT: Okay. Very good. I also want to thank
25 counsel for the sentencing memoranda. And I know there were

1 some letters. Mr. Garcia, your mom wrote me a really nice
2 letter. I got a lot of nice letters from your nieces and
3 nephews. And yesterday Mr. Legutki filed your letter. So I
4 thank you guys for all of that. You've got a very nice family.
5 And I appreciate Mr. Legutki and Mr. Garcia, both of you, I'm
6 sure, did a lot of legwork to get those letters on the docket,
7 so thank you.

8 THE DEFENDANT: Thank you.

9 THE COURT: I think Mr. McKechnie gave me the honor of
10 attaching the entire trial transcript to the PSR. I won't say
11 I read every word of it, but I did go back and read my ruling
12 at the end, so that's what I have. Is there anything that I'm
13 missing? Government, is that everything I am supposed to have
14 from your perspective, Mr. Sturino?

15 MR. STURINO: Yes, your Honor.

16 THE COURT: And, Mr. Legutki, is that everything that
17 the defense wanted me to have to review as well?

18 MR. LEGUTKI: Yes, sir. Thank you.

19 THE COURT: Okay. Wonderful. Thank you.

20 So let's start with the PSR then. Mr. Legutki, did
21 you have a chance to review it with Mr. Garcia?

22 MR. LEGUTKI: Yes, sir. Mr. Garcia did receive his
23 PSR, as well as the disclosure of the sentencing
24 recommendation. Obviously because of the COVID restrictions
25 that we have experienced over the last several months,

1 Mr. Garcia and my communication has been limited to audio,
2 telephonic and some video communication. But I -- we have
3 the -- both of those documents, and as well as the statement
4 that Mr. Garcia produced. We discussed that. I will just
5 note -- and I will get into it later. When Ralph and I spoke,
6 I think the day before yesterday, there was a slight change to
7 what I initially gave Ralph, and I incorporated some changes
8 when I submitted it to the Court, so, yes, we have had an
9 opportunity to review those documents.

10 THE COURT: Okay. Great. And I know you have
11 a -- you articulated in your memorandum an objection on the
12 acceptance of responsibility. Did you have any other
13 objections, comments, or corrections. There were a few
14 objections to the conditions of supervision, which we'll go
15 over, too. Anything else besides those?

16 MR. LEGUTKI: No, sir. I think -- I tried to be
17 inclusive, but concise, in my sentencing memorandum.

18 THE COURT: Okay. And I do appreciate that. And
19 we'll go over both the acceptance of responsibility point, as
20 well as the objections to the conditions of supervision in a
21 couple of minutes here, but I just wanted to see if you had any
22 other objections, comments, or corrections.

23 MR. LEGUTKI: That is it, sir.

24 THE COURT: Okay. Mr. Garcia, I know Mr. Legutki told
25 us you have had a chance to go over the PSR on the video and

1 also on the phone with him. Did you have any objections,
2 comments, or corrections, in addition to the ones that he has
3 raised in the sentencing memorandum?

4 THE DEFENDANT: No, not at this time, no.

5 THE COURT: Okay. Very good. Thank you. And
6 Mr. Sturino, does the government have any objections, comments,
7 or corrections to the PSR?

8 MR. STURINO: No, your Honor.

9 THE COURT: Okay. Very good. So why don't we start,
10 then, with acceptance of responsibility point. And I will tell
11 you my own take on it is that it's kind of a partial-credit
12 situation. I read what you all said in the memoranda, and I
13 think Mr. Garcia deserves some credit for not contesting the
14 factual basis of offense of conviction. His argument was
15 really a legal one and it was based on a defense of entrapment,
16 and I explained in my memorandum the reason I didn't think it
17 was successful legally, but I do think -- so I think as
18 a -- first of all, because he went to trial, he wouldn't be
19 eligible for the third point anyway, so what we're talking
20 about is two points. And my take on it is, I don't think when
21 you contest the facts on the basis of shifting the blame from
22 yourself to the informant, that you get full credit, so I don't
23 think I can give him the two points under the guidelines. But,
24 you know, he certainly simplified matters considerably by not
25 contesting the factual basis. The trial was probably one-fifth

1 of the trial it would have been if we had to put every witness
2 on, and so I'm going to give him substantial partial credit,
3 like my old calculus professor used to do when my answers weren't
4 quite right, but I was on the right track at least. My
5 professor was very generous with partial credit, and I will be
6 as well because I think Mr. Garcia got a considerable distance
7 toward where you have to be to get the two points.

8 Now, at the end of the day, the guidelines are really
9 long in this case. I don't think I will be inclined to give a
10 guideline sentence because of the length of the guidelines and
11 Mr. Garcia's age. And, you know, what he pointed out in his
12 letters is also -- I mean, his criminal history is really long,
13 serious. It's one of the longer and more serious ones I have
14 seen. But when he was -- his last trip to custody, when he
15 came out, he did some things that should have put him in good
16 shape to carry on, and unfortunately he got caught back up in
17 drugs and guns. I guess it's a long-winded way of saying the
18 partial credit and my disinclination to give him a sentence of
19 292 months is going to narrow down to his benefit in the end on
20 this, but I don't think I can give him the two points as a
21 technical guideline matter.

22 Is there anything else the government would like to
23 say on this issue just to create a full record?

24 MR. STURINO: No, your Honor. We laid out our
25 arguments in our sentencing memo. I understand your Honor's

1 ruling, so I have nothing more to add.

2 THE COURT: Okay. Mr. Legutki, anything more you
3 wanted to add to the record?

4 MR. LEGUTKI: Your Honor, you touched upon one thing
5 that I was going to discuss a little bit later, but now there
6 is a nice way to segue way, certainly since we have the audio
7 and visual, who knows what's going to happen in two minutes
8 with that, so allow me to get that in.

9 This case has gone on for a long time. I have had an
10 opportunity, probably unlike any other federal defender case,
11 to get to know Mr. Garcia. I've had many, many discussions
12 with him in person and in video, telephonically. And one of
13 the things he added, just the other night -- or the other day
14 when I spoke with him, and he wanted it included in his
15 statement and I did include it to the Court, but maybe not in
16 the version that Ralph has. When I was talking to him, he
17 said, "John, you know, when I got out, I really did want to do
18 things differently. And I had an opportunity to get a job
19 driving a truck going out of state. Going out of state would
20 have been a game changer for me. I would have gotten out of
21 the neighborhood, gotten away from people. He did mention --
22 he did not mention the CI by name, but I'm sure there's others
23 as well. But because he was on parole, he was unable to leave
24 the state. He was unable to get that job. So that was just an
25 important consideration that Ralph wanted me to convey to you.

1 And when I last spoke with Ralph in writing, getting things
2 back and forth, they kind of got cut off, but Ralph asked me to
3 stress that to the Court and asked you to make that part of
4 your consideration, please.

5 THE COURT: And when he was in state custody
6 previously; is that right?

7 MR. LEGUTKI: Yes, sir.

8 THE COURT: And that's, in a way, too bad, because the
9 fact is if you were in federal custody or federal supervision,
10 I have signed off on people getting a long-haul trucking job
11 when they're on supervised release because it's actually a good
12 job. It pays really well and, you know, the trucks and the
13 cows and whatever you're hauling in the back don't care about
14 your record, and a lot of employers don't either. It's a
15 shame, actually, that you weren't in federal supervision
16 because we would have signed off on that.

17 And I've said to many people over the year, you know,
18 I know where you are from, Mr. Garcia, much better than I know
19 most defendants because you don't live too far from me. But
20 when I have defendants who come in and they have grown up their
21 entire life in Englewood. And I say, "Do you know what the
22 unemployment rate is in Englewood for African-American men with
23 felony convictions? It's really high." And then I say to
24 them, "Do you know what the unemployment rate is in Iowa?" And
25 this is pre-pandemic. It was almost zero. And there were lots

1 of really good jobs. They're hard jobs. Working in a
2 meat-packing plant is a hard job, but they pay very well. The
3 cost of living in Iowa is a fraction of what it is in Chicago.
4 The public schools are excellent. And I've had a few people
5 take me up on that and they've moved. I had one guy out on
6 pretrial release, and he wanted to get a job in Iowa, and by
7 the time his case came up for a plea, it was about a year and a
8 half in. He had a good job that paid well. His wife had a job
9 teaching in Iowa. They wanted to stay in Iowa. And I cut his
10 sentence in half because he proved to me that he could do it.
11 His guidelines were like three years and I gave him a year and
12 a half because he proved to me that he was on the right track.
13 And, unfortunately, the state system isn't as good as the
14 federal system in flexibility, so I hear the argument and I
15 averred to it myself because I understand it.

16 The balance against that is everything I heard at the
17 trial. And everything I heard at the trial was -- it's someone
18 who really still knew where all of the drugs were and all of
19 the different kind of drugs you could get. And where all of
20 the guns were and how you could get all of the guns, too. And
21 that's the balance here. You have to take the bitter with the
22 sweet at sentencing. I am well aware of the argument you just
23 made, Mr. Legutki, and I referenced myself five minutes ago.

24 And, you know, if I had to rank the defendants who
25 come in in terms of their demeanor in the courtroom and how

1 pleasant they were to deal with, Mr. Garcia would be near the
2 top. He's actually -- you know, I have enjoyed him. There's a
3 lot of defendants I don't enjoy because they're sullen and they
4 feel sorry for themselves and they're bitter. And it's easy to
5 get bitter after you've been in the system as many times as
6 Mr. Garcia has, and he's not. He doesn't look bitter. He
7 doesn't sound bitter. I actually have enjoyed having him. I
8 think there's something there and I'm really rooting for him.
9 And this time when you come out, you'll be on federal
10 supervised release, and we'll work with you in a way that the
11 state court doesn't really have the ability to work with you,
12 but we will keep working with you. We don't give up on people
13 who don't give up on themselves. And that's what I can tell,
14 Mr. Garcia, you haven't given up on yourself, and your mother
15 hasn't given up on you either.

16 Okay. Thanks, Mr. Legutki. On the PSR I think we
17 have covered all of the ground, and on the guidelines, I am
18 going to end up accepting the guideline calculation, but I am
19 going to give substantial partial credit for the way the case
20 has unfolded in the end and the fact that Mr. Garcia did
21 basically admit to all of the factual basis of the offense, and
22 it was just a legal question that we had to sort out at the
23 trial.

24 So let me turn this over to the lawyers, then,
25 Mr. Garcia, if that's okay. I'll let the lawyers have their

1 say, and then when they're all done, I will let you have your
2 say. Okay?

3 THE DEFENDANT: Okay.

4 THE COURT: Okay. Mr. Legutki, I'll give you the
5 first and last word, so you can start out and then Mr. Sturino
6 can say the government's piece, and then if he says anything
7 that offends you, you can turn around and come back on him.
8 Okay?

9 MR. LEGUTKI: Thank you. I doubt Mr. Sturino would
10 say anything offensive. Throughout this ordeal he has been
11 courteous and professional just to the nth degree, and the same
12 goes for Mr. Vandenberg.

13 Your Honor, your Honor touched upon something that
14 it's really the -- a lot of times I don't go into because it's
15 personal, almost nonobjective standard, but it's my
16 relationship with Mr. Garcia. You can see from the picture, he
17 is in one of those holding rooms. Your Honor, I don't know if
18 you've ever been in a holding room with a defendant. They lock
19 the door behind you and the guards walk down the hallway. It
20 can be a very difficult experience. I'm 6'2" and about 210
21 pounds, and that's a little bit of a lie in my weight, but I'm
22 a big guy. There are many times I have felt threatened -- you
23 can't show it, of course. There is a lot of menacing, a lot of
24 difficulty.

25 Mr. Garcia from the first day has been a straight

1 shooter. What you see is very straight and honest and
2 forthcoming. What you see in court is just a continuation of
3 his overall demeanor. It's not an act, your Honor. Ralph, he
4 is -- to use common language, he knew the jig was up, but there
5 were certain circumstances he wanted to bring forward to the
6 Court, and there was never a dispute as to anything else. So
7 just what you said, your Honor, that is Mr. Garcia and has been
8 from the beginning of the minute one, the minute I met him. I
9 never felt threatened by him. He was never menacing or
10 accusatory. He was very businesslike and gracious, and that is
11 his demeanor.

12 Your Honor, the dialogue today I think is unique to
13 the circumstance, and it really should be. And the
14 circumstances where we find Ralph with his age and the 15-year
15 mandatory minimum as to Count Four.

16 If the circumstances were different, and what I mean
17 by that is Mr. Garcia's advanced age, it might be a different
18 presentation to the Court. But I think unless and until
19 Congress revests the sentencing discretion where it belongs,
20 with the trial court, we are stuck with the 15-year mandatory
21 minimum.

22 I looked at a lot of cases, spoke with a lot of my
23 colleagues about the mandatory minimum, how we could approach
24 it? Again, unless Congress revests the Court with the
25 sentencing discretion where it belongs, we're stuck with it.

1 That said, 15 years is a long time. It's a long time
2 for anyone under any circumstances, but I think it's made
3 harsher given the fact that Mr. Garcia is going to be spending
4 15 years in prison. It's made harsher and more difficult, more
5 dangerous, given his age.

6 3553(a) says we should impose -- the Court should
7 impose a sentence that is sufficient but not greater than
8 necessary. Your Honor, I ask this Court to please consider
9 that the 15 years, it is more than sufficient. It is -- it
10 gets to the heart of what an appropriate sentence is.

11 As I pointed out in my sentencing memorandum,
12 Mr. Garcia is going to be over 70 years old when he gets out.
13 There's going to be a hard -- it's going to be hard to adjust
14 to life. I don't know if Ralph -- I hate to say this, but if
15 Ralph makes it, I sense from this Court, from your Honor, that
16 it would be hard to sentence someone to the rest of their life
17 in prison, and it's not something any of us likes to hear,
18 likes to encounter, but that's the reality that we're facing
19 here with Mr. Garcia's situation.

20 Ralph, when he got out of prison on the state
21 side -- your Honor is right. He knew where the guns were. He
22 knew where the drugs were. That was his life. Ralph didn't
23 grow up on the right side of town. Didn't grow up -- more
24 opportunities that I have had, he didn't have those. When he
25 got out, yes, he knew where the illegal activities took place,

1 but he also knew how to get a job.

2 Ralph -- I think the PSR indicates that Ralph was
3 making a pretty good buck. He was able to secure a pretty good
4 job. He got job training. He reached out to people, but I
5 guess that's a two-edge sword reaching out to people.

6 Given the opportunity, I think Ralph could have and
7 will, if he lives -- if he lives -- set the record straight for
8 himself. As Mr. Garcia said to me, and as I tried to
9 articulate to the Court, maybe not as well as Ralph did, but if
10 he just has a chance to get out of state, get away from his
11 circumstances, this wouldn't have happened. Yeah, he would
12 still know where the people are with the guns. Yeah, he would
13 still know where the people are with the drugs. But he would
14 have been out of state away from it.

15 I ask the Court, please, to consider that the 180
16 months on the 15-year man. min. on Count Four is sufficient,
17 but not greater than necessary in the sentence for Ralph
18 Garcia, and I ask the Court to, of course, give him credit for
19 the time served that Ralph has already put in and I ask that a
20 below-guideline sentence consistent with that be imposed by
21 this Court.

22 Thank you.

23 THE COURT: Okay. Thank you. And, Ms. Kwong, I just
24 want to confirm, by my calculation here it looks like
25 Mr. Garcia has already been in custody for the last 57 months.

1 Does that sound right to everybody? From February of 2016?

2 MR. STURINO: Yes, your Honor. This is Tim Sturino on
3 behalf of the United States.

4 MR. LEGUTKI: Yes, sir. And John Legutki on behalf of
5 Ralph Garcia. I have -- Tim, I have February 23, 2016.

6 THE COURT: Okay. So that's almost exactly 57 months
7 already in custody.

8 Well, thanks, Mr. Legutki, I appreciate it.

9 Mr. Sturino.

10 MR. STURINO: Thank you, your Honor. Just one
11 housekeeping matter I wanted to make clear for the record.
12 Your Honor indicated that you were adopting the guidelines in
13 the PSR, and so I just wanted to make clear that it does not
14 appear that either party has an objection to the guidelines.
15 The guideline range, as calculated by the probation officer was
16 292 to 327 months. That is based on a Criminal History of VI,
17 and a total offense level of 35 when we do the grouping rules.
18 And so I just wanted to make sure that that was the Court's
19 ruling and the Court's finding at the outset.

20 THE COURT: Yes. So this is the way I would look at
21 it, Mr. Sturino. I think the defendant did object to the
22 guidelines in terms of acceptance of responsibility, and I'm
23 overruling that objection as a guideline matter, but taketh
24 away with one hand and giveth much of it back with the other
25 hand under 3553(a). And I understood that to be the only

1 objection, so with that objection being overruled, I will adopt
2 the offense level of 35. Criminal history of VI and all the
3 career offender and grouping calculations, and I think it's 292
4 to 365 is what I have here. Does that sound right?

5 MR. STURINO: Excuse me. Yes, you're correct. Yes,
6 the Court is right.

7 THE COURT: Is that an accurate recitation of the
8 defense position, Mr. Legutki?

9 MR. LEGUTKI: Yes, sir.

10 THE COURT: Okay. So I will adopt that guideline, and
11 I think that calculation out to 24 in a full year and a
12 guideline sentence therefore would, you know, Mr. Garcia
13 was -- he's 60 now. So he was 56, I guess, 55 or 56 when he
14 went into custody. 55?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Let me just -- oh, you just had a
17 birthday about a month ago. So October 19 of -- yes, you're
18 55, 55 and a half almost when you went in. So
19 24-and-a-third-year sentence would put you just on the verge of
20 80. And with good time, you would subtract 15 percent of 24
21 and a third, so that would put you maybe at 77 or something
22 like that; that's pretty old.

23 MR. LEGUTKI: I'm sorry, sir. We just had an
24 interesting seminar on that, calculation of good time.
25 Mr. Hefler at the Federal Defender's Office gave a very

1 detailed explanation of that.

2 THE COURT: Yes. Here's the thing, Mr. Legutki. I
3 think that stats would tell you that Mr. Garcia at age 55 was
4 unlikely to be committing drug and gun crimes, so it's a little
5 bit of a double-edged sword. But I think there's a big
6 difference between 55, which is what I am right now, and 70 or
7 80. I mean, I think you fall off the shelf in terms of drug
8 and gun crimes when you hit 70. I have yet to see a 70-year-old
9 who I was sentencing for a drug or gun crime. I have never
10 seen one. I've seen fraudsters in his 70s. I just had a guy
11 plead guilty in his early 80s, but he wasn't dealing -- his
12 drug crime was prescription opioids, and he was a doctor. So I
13 guess it's not unheard of, but it's really unlikely at age 70
14 or 75 or 77. It's a big difference between 55 and 75 in that
15 respect. So -- but I do appreciate everybody helping. Doing
16 all of the math here, so it's not as daunting.

17 Mr. Sturino, thank you for cinching up the guidelines.

18 MR. STURINO: And thank you, your Honor. I appreciate
19 it.

20 So, your Honor, I'll talk first about the
21 circumstances of the offense a little bit, and I'll talk about
22 Mr. Garcia's criminal history. At the outset, I do acknowledge
23 that the amount of time that Mr. Garcia is facing is
24 extraordinary. That's not lost on the government. It is a lot
25 of time that he is looking at under the guidelines and it's a

1 lot of time he is looking at under the statute.

2 I do think, as the Court just calculated, it is all
3 correct. It is all correct under the guidelines and correct
4 legally under the statute. And when I look through
5 Mr. Garcia's PSR, outside of his age, your Honor, I struggle to
6 see the mitigation with respect to his background. I do
7 acknowledge that he's, you know, currently, I believe, 59 years
8 old and that, as your Honor just said, it is unlikely that he
9 would return to a life of crime. The statistics make it fairly
10 unlikely that he would return to a life of crime even after a
11 15-year sentence. However, as your Honor has pointed out, it
12 was unlikely that he would have committed this crime according
13 to the statistics at the age of 55. And so statistics
14 obviously only tell us so much about what a person will do in
15 the future.

16 And it's a really hard, almost impossible thing to
17 gauge. And, unfortunately, I don't know Mr. Garcia. I haven't
18 had the opportunity to sit with him or talk to him. So I make
19 my analysis and my future predictions based on what I see in
20 the paper. And that's not entirely fair to Mr. Garcia. I get
21 that. That's why we have defense attorneys and we have
22 prosecutors, but that is where I come from and that's what I
23 see. And I see a person who has the criminal history
24 Mr. Garcia does, and, unfortunately, that drives my
25 recommendation of a guideline sentence.

1 Your Honor, with respect to the circumstances of the
2 offense, I don't wasn't to go back through what happened on
3 those six occasions. Mr. Garcia sold one firearm, as well as
4 220 grams of methamphetamine to a confidential source. Your
5 Honor sat through the trial and knows the evidence as well as
6 anyone here. What I want to talk a little bit about was the
7 circumstances of those offenses, and other things that
8 Mr. Garcia said that shows that his criminal conduct at that
9 time at the age of 55 was not limited to just these
10 interactions with the source.

11 And Mr. Legutki said a moment ago that Mr. Garcia knew
12 where the drugs and the guns were, and that is a fair
13 representation. I think it's more than that, though. I think
14 he knew not only where the guns and the drugs were, but I think
15 he had access to the guns and the drugs and he was selling
16 other drugs to other persons at this time.

17 Your Honor, if you look at the -- if you look at the
18 circumstance of the offense and the recordings between
19 Mr. Garcia and the source -- and a lot of what I'm going to
20 talk about, your Honor, was in the government's reply to the
21 post-trial motions related to pre-disposition. And it shows
22 that when this offense began on November 15th between the
23 source and Mr. Garcia, Mr. Garcia was not a person who was
24 taking orders from the source or was sitting back and waiting
25 for the source to direct him. Mr. Garcia talked about his

1 cocaine sources at the time and that he could get the source
2 cocaine. Mr. Garcia was talking about how he has reliable
3 sources for different types of narcotics. They talked about
4 heroin. They talked about the white or the black or the mud,
5 which refers to different types of heroin.

6 Mr. Garcia was not shocked or appalled by the source's
7 questions. Instead, it was a lively and engaging conversation
8 that Mr. Garcia fully participated in and offered alternatives
9 to what the source was asking for.

10 On one occasion, I believe it was November 17th, your
11 Honor, Mr. Garcia even indicated that he had sold narcotics the
12 day before. He said, "I was 'selling the shit,'" a reference
13 to cocaine according to the government, the previous day.
14 That's in the transcript on page 299 to 300.

15 On another occasion he indicated how he could get
16 eight-balls for \$900. And, in fact, your Honor, it was
17 Mr. Garcia who recommended to the confidential source that he
18 obtain ice -- methamphetamine. It was not the source's idea.
19 And after Mr. Garcia recommended methamphetamine, he then talks
20 about pricing and quality and potency and things like that
21 which shows that he hadn't just learned of it that day. He was
22 in the game, so to speak, and he knew and had access to these
23 items.

24 And just as an aside, your Honor, I think it's also
25 important that the methamphetamine that Mr. Garcia obtained and

1 sold to the confidential source was pure methamphetamine, 99
2 percent, if not 100 percent pure, an extremely dangerous
3 narcotic. It was so dangerous that Mr. Garcia himself would
4 explain to the confidential source how dangerous it was, how
5 (inaudible) it was. He would tell him not to touch it or not
6 to rub his eyes. And he would double baggy the drugs when he
7 provided it to the source. That is the type of narcotic we are
8 talking about that Mr. Garcia was selling to the source, and
9 ostensibly to the source's customers, is the story that the
10 source gave Mr. Garcia.

11 Your Honor, in addition to what the government
12 contends was other drug trafficking and other access to drugs
13 that Mr. Garcia had, Mr. Garcia and the source also had long
14 conversations about firearms, and a lot of this is in our
15 predisposition session in our reply brief beginning on page 15
16 of that reply. And I'll highlight a few.

17 Mr. Garcia talked about how he had gang member
18 friends, P-Stone gang member friends, who had six guns and they
19 could get them. He talked about how they could kidnap someone
20 and obtain that person's guns. He indicated they wouldn't kill
21 the person, but they could kidnap him and take that person's
22 guns. He provided other alternatives. That they could get
23 younger gang members to straw purchase firearms for them, and
24 then they could use the guns for their purpose.

25 Your Honor, on a few occasions Mr. Garcia indicated

1 that he had possession of a firearm at that time, but he was
2 unwilling to give it to the source. For example, your Honor,
3 in the transcript at pages 20 to 22, Mr. Garcia talks about how
4 he had a firearm "over by Mario's." He had forgotten about
5 that one. He explained to the source that he wanted to keep it
6 there just in case he needed it. That's also at transcript 30
7 to 33, the latter part.

8 On another occasion, your Honor, Mr. Garcia mentioned
9 to the source that he had a 40 cal. That's in the transcript
10 at pages 255 to 256.

11 On another occasion, your Honor, the transcript -- it
12 looks like page 152, I believe, the source asks Mr. Garcia if
13 he wanted to get rid of that old Dirty Harry that he was
14 telling him about, and he said, "No. I'm going to hang on to
15 it until I get something else." Of course, Mr. Garcia knew he
16 was a felon. Of course, Mr. Garcia knew he couldn't have these
17 items.

18 So I think the important point is, you know, contrary
19 to Mr. Garcia's suggestion, it wasn't just the source -- he
20 wasn't just doing this for the confidential source. I don't
21 believe that is accurate. When you look at all of these
22 discussions, and they're lengthy discussions and long
23 transcripts, you see that Mr. Garcia was involved in criminal
24 activity. He had a job as well and he was willing to work.
25 There's no doubt about that, but he was also involved in

1 criminal activity, deeply involved in criminal activity, and I
2 believe that is reflected in the transcripts, and I would ask
3 the Court to consider.

4 Your Honor, turning next to Mr. Garcia's criminal
5 history. Mr. Garcia's criminal history, I think, as described
6 by the probation officer, was quite extensive, and I think the
7 seriousness of his criminal history and the extensive nature of
8 his criminal history, including the violent nature of his
9 criminal history, makes it very difficult, at least from my
10 perspective, for the government to recommend a sentence below
11 the guidelines range.

12 Your Honor mentioned that this is one of the more
13 serious criminal histories you've seen. I don't believe I have
14 seen one more serious in 10 years. Mr. Garcia has convictions
15 for attempted armed robbery and that was one case. He stabbed
16 a victim with a knife. Albeit, your Honor, that was in 1979
17 and he was 19 years old. He then had a conviction for
18 attempted murder. He shot two persons with a handgun, that's
19 in paragraph 77 of the PSR. Again, he's 21 at that point. He
20 then has a conviction for aggravated battery, that's paragraph
21 78. At this point he is 29. These aren't youthful
22 indiscretions anymore. Frankly, I don't think shooting someone
23 can ever be considered a youthful indiscretion, but regardless,
24 he's growing up, and in that instance he kicks a police officer
25 in the head, and he only got two years for that.

1 Paragraph 80, your Honor, he has another aggravated
2 battery with a firearm conviction. However, the important
3 thing to note there is he's again charged with attempted
4 murder. He essentially has two attempted murder convictions in
5 his background, your Honor. That is something I have never
6 seen.

7 And, your Honor, he doesn't have that many
8 convictions. He really doesn't. Just about a handful. But he
9 has received serious and long sentences from the Illinois
10 Department of Corrections. Yet when he is paroled in 2012 and
11 then discharged in 2015, he is, again, based on my prior
12 comment, deeply involved in criminal activity again, selling
13 guns and selling pure methamphetamine, as well as obtaining
14 other drugs, or the ability to do so.

15 So, your Honor, I understand. When Mr. Garcia is
16 released, whenever that is, he is likely not hopefully going to
17 shoot anyone. That's not what I'm saying. He is not going to
18 stab anyone, I hope not, when he's 70 or whatever age he is
19 going to be when he is released, that's not what's going to
20 happen. However, what you see in his criminal history and what
21 you see in this offense is he adapted. He was dangerous when
22 he was 20, there's no doubt about it. He was dangerous when he
23 was 55. He just changed a little. He just adapted to the
24 time. Selling pure methamphetamine, putting firearms on the
25 street in the hands of other gang members is dangerous.

1 I don't know what he'll do at 70, hopefully he will be
2 done. But, again, as I started, your Honor, I have these
3 papers as a guide for me, and I don't see, absent his age --
4 and those statistics were wrong with Mr. Garcia the first time.
5 I don't see a whole lot of mitigation. And I don't enjoy
6 saying that, your Honor, but unfortunately it's what I see in
7 his background. It's a violent background and an extensive
8 background, and I think it justifies a lengthy sentence.

9 Your Honor, I don't have anything else. I can address
10 the objections for supervised release conditions. A few, I
11 agree with Mr. Legutki; one or two, I would I disagree with,
12 but we can do that now or at the end.

13 THE COURT: Why don't I let Mr. Legutki finish his
14 3553(a) presentation, and then let Mr. Garcia offer any
15 comments he would like, and then we'll go over the terms of
16 supervision if that's okay.

17 So, Mr. Legutki, any further rebuttal?

18 MR. LEGUTKI: Yes, thank you, your Honor. Thank you,
19 Mr. Sturino. I think when the government looks back in time
20 and it sees what cannot be changed -- even God can't change the
21 past. But what the government does is improperly enhance that,
22 it discusses and suggests a lot of uncharged, unproven conduct
23 that is -- I don't think makes it into the allegation phase, so
24 I think that's inappropriate.

25 Yes, Mr. Garcia grew up in a different world than I

1 think all of us have grown up in or have experienced. And I
2 guess we can read a rap sheet and if we live in the world where
3 there is violence, if we live in the world where there are
4 drugs, I have a feeling that we are no -- we would know where
5 the violence is, we would know where those guns are, we would
6 know where the drugs are.

7 The government stresses about the purity of the meth,
8 and I don't think there's any allegation -- there wasn't even
9 allegation that Mr. Garcia was the manufacturer of this. He
10 gets -- he gets it where he gets it. It is wrong to have it.
11 It is wrong to sell it. It is illegal. But Mr. Garcia was not
12 the manufacturer.

13 You know, it's not like you go to the 7-11 and say,
14 "I'll have 100 percent pure meth or 50 percent pure
15 methamphetamine." That's what's available on the street.

16 As far as 3553 factors, your Honor, I would stress
17 that we have -- the Court needs to formulate a sentence that's
18 sufficient but not greater than necessary. I think we're all
19 understanding that Mr. Garcia gets out when he's 70-something
20 years old, the likelihood of recidivism, the likelihood of
21 being involved in this kind of conduct greatly diminishes. The
22 government says they don't see any mitigation to that.

23 Your Honor, I think age, in and of itself, is a
24 mitigating factor in Mr. Garcia's situation. There were
25 glimmers of Mr. Garcia's willingness to get a real job, try to

1 avoid going back to jail. Your Honor heard all of the evidence
2 regarding -- during trial regarding the issue of entrapment,
3 and took all of the factors that the government just read off
4 into consideration in rendering his verdict, but I think that's
5 water under the bridge, your Honor.

6 What we're looking at now is sentencing, and I think
7 Mr. Garcia's sentence, 180 months, which is 15 years, and I'm
8 looking at a chart that was just given to us a few days ago,
9 that would come out to be 810 days of good time, and the actual
10 time served would be 12 years, nine months, and 11 days,
11 according to Mr. Hepler's chart that was just provided to us at
12 the recent seminar at the Federal Defender. So I, again, ask
13 this Court for a below-guideline sentence for Mr. Garcia, no
14 greater than the 180 months, 15 years as to Count Four, and any
15 sentences with the remaining count to run concurrent with Count
16 No. Four.

17 THE COURT: Okay. Thank you very much. Thank you for
18 all of your arguments, and thanks to both counsel.

19 So, Mr. Garcia, at sentencing a defendant has an
20 opportunity to say anything you would like. I did get your
21 letter last night, which I do appreciate. If there's anything
22 else you would like to say, though, you are welcome to do so at
23 this time, sir.

24 THE DEFENDANT: The only thing I would say, your Honor
25 is that in the beginning I really tried hard. It's not until I

1 got some more hurdles, which made it I didn't know where to go,
2 so I went back to the people that always helped me before and
3 that's how I found myself in this situation. You know, a lot
4 of those things we talked about, a lot of those discussions we
5 had were just that, discussions. Nothing. Especially when I
6 started to realize that he wanted me to do it. He didn't want
7 to do it. He wanted me to do it. So that's how -- there's no
8 way I can prove none of this or anything, but that's the way it
9 goes.

10 And thank you for everything you have done and thank
11 you, Mr. Sturino, for leaving me out there as long as you did.

12 THE COURT: Okay.

13 Is that all you wanted to say, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Thanks, Mr. Garcia. Thank you for your
16 letter and the letters from your family members. I really
17 appreciate getting those, too.

18 MR. LEGUTKI: Your Honor, if I can just add one more
19 thing. Because of the newness of the situation, does the
20 record have to be made that everyone agrees to have this by
21 video under the CARES Act?

22 THE COURT: Yeah, we should do that orally, too, and I
23 will just confirm that it has been put on there. You guys did
24 send me the order. There is an order that I signed last week
25 that has written consent to proceeding under the CARES Act, but

1 we might as well orally confirm that as well.

2 So, Mr. Garcia, I probably should have started out
3 today by asking you this, but you probably know about the order
4 we've entered. You have no problem proceeding by video today,
5 sir?

6 THE DEFENDANT: No, no. Not at all.

7 THE COURT: Thank you, Mr. Legutki, for reminding me
8 of that. And it just gave me the opportunity to check and make
9 sure that we have put the signed order on the docket, which we
10 have, so we're good to go here.

11 Okay. In terms of the conditions of supervised
12 release, I would like to go over those now because there were a
13 few objections and I want to make sure that you all end up
14 with --

15 (Phone ringing.)

16 So it looks to me, Mr. Legutki, like you guys had
17 objection to a couple of the discretionary conditions and a
18 couple of the special conditions, but no objections to the
19 mandatory conditions; is that right?

20 MR. LEGUTKI: No, your Honor. The mandatory, as far
21 as I know, are mandatory.

22 THE COURT: Thanks. Okay. Well, let me go over the
23 mandatory conditions, then, with Mr. Garcia. Mr. Garcia, if
24 there's any questions you have about any of the conditions
25 we're going to go over, if you ask me now, I can try to explain

1 them. But I'm going to end up giving you in terms of
2 supervised release the statutory mandatory minimum amount of
3 time. So it ends up being five years of supervised release
4 because that's the minimum on Counts Two, Three, and Five.
5 There's a four-year minimum on Counts One and Six and a
6 three-year minimum on Count Four, but if I impose them all
7 concurrently, it ends up being five years of supervised
8 release. So you will have to adhere to these conditions after
9 the first five years after you're released. I would consider
10 terminating them early if it turns out that you are in complete
11 compliance for the first half of that period. Okay,
12 Mr. Garcia?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. So here are the mandatory
15 conditions. Number 1 is you shall not commit another federal,
16 state, or local crime; that's pretty self-explanatory.
17 Number 2 is you shall not unlawfully possess a controlled
18 substance. Number 6 is you shall cooperate in the collection
19 of a DNA sample, if the collection of such a sample is required
20 by law. And No. 6 is a drug-testing condition that says you
21 shall refrain from any unlawful use of a controlled substance,
22 and submit to one drug test within 15 days of release. And
23 then at least two periodic tests thereafter up to 104 periodic
24 tests for use of controlled substance during each year of
25 supervised release. So a maximum of two tests a week, and the

1 probation officer will coordinate that with you. All of that
2 clear, Mr. Garcia?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Great. Let's move on to the
5 discretionary conditions, then. Number 4 is you shall speak
6 and work conscientiously at lawful employment, or if you're not
7 gainfully employed, you should pursue conscientiously a course
8 of study or vocational training that will equip you for
9 employment. That makes sense no matter what your age is,
10 because you're going to have to support yourself, but I don't
11 expect that you're going to, like, go back to college or
12 something like that. You might end up doing a truck-driving
13 course, though. And if you did that, the probation officer
14 might be able to help hook you up with that and maybe even pay
15 for it if that's something you're interested in. And just know
16 that this time around there will be a lot more flexibility than
17 last time in terms of things you might want to do that would
18 require travel outside of the district, as long as you're in
19 compliance with all of these terms. Okay, sir?

20 THE DEFENDANT: Yes.

21 THE COURT: Number 6 is one to which there was an
22 objection here. And, Mr. Sturino, I will ask you your views on
23 that.

24 MR. STURINO: Your Honor, our position is that No. 6
25 should be imposed. I think if you hear from Mr. Garcia, he

1 indicated that, you know, when he got out in 2015, he tried to
2 do it the right way. He got a job. He attempted to stay away,
3 and at a certain point, he couldn't. And when I say stay away,
4 I mean stay away from the Latin Kings. And when he got back
5 involved with the Latin Kings, when he associated with the
6 confidential source and others, all of a sudden he was -- had
7 access to dealing the drugs and firearms. And so I think this
8 is a relatively innocuous condition, but I do think it is
9 important especially for a gang case and for a defendant who
10 has had life-long membership in a gang.

11 THE COURT: Okay. Mr. Legutki, anything else you
12 wanted to say beyond what you said in the memo?

13 MR. LEGUTKI: Your Honor, when you go back to the
14 neighborhood that you grow up in -- he grew up in and people
15 are in gangs, what do you do? I mean, if you're surrounded by
16 this, you're in this environment, how can you not help but
17 communicate with these people? I think one of the mandatory
18 conditions was not to engage in criminal activity. I think
19 that does it. If you're put in a neighborhood environment you
20 grew up in you know all of these people and they are in gangs
21 and Latin Kings in these neighborhoods or GDs or whatever but
22 that's the only people around, how is this practical?

23 THE COURT: Well, I think it requires a practical
24 construction by the judge. And I have had this come up in
25 other cases that are pretty similar to Mr. Garcia's. And what

1 I would say to that is, look, if you have family members who
2 are in this type of activity, there's a difference between
3 going to Thanksgiving at your mother's house where you're
4 communicating with people about the turkey dinner and the Bears
5 game and the kind of conversations that were recorded and
6 played at the trial. And I do think that this is the kind of
7 thing that should give someone like Mr. Garcia an added
8 incentive to actually stay away from people who he knows he
9 shouldn't be associating with them. And he said himself, "I
10 tried really hard. And for a while I was doing it. And then I
11 went back to all of the people who had helped me before." And
12 all of that help that he's gotten before has left him in IDOC
13 for about 25 years of his life. That's not the kind of help he
14 should be looking for.

15 So I am going to impose it, but I want you to
16 understand, Mr. Garcia, I have a practical construction and
17 it's what I just said. If you end up at your mother's house or
18 a relative's house and there happen to be people who are gang
19 members there, you know, I can't choose your family for you.
20 And I can't control all of the other people in your family
21 either, or your friends, for that matter.

22 What this is really the idea is when someone asks you
23 to reassociate with criminal activity, and you know that's what
24 they're doing, this is another reason to say no. Because not
25 only is it a violation if you get caught, you could get charged

1 again, but you also would be in violation of the terms of your
2 supervision, so you have to refrain from -- and, again, listen
3 to the word "knowingly," any person who you know to be engaged
4 in criminal activity. If you know they want to sell guns or
5 drugs, that should be like kryptonite for you. You should get
6 away as fast as you can, because you don't want to spend any
7 more time than you have to in prison. And I'm cognizant of
8 your age. I'm cognizant of the glimmers of hope that
9 Mr. Legutki was averring to, but I do think you really have to
10 make the effort, and you have to make it stick this time.

11 I believe you when you say you were looking for
12 legitimate work. There's pay stubs and there's reports of
13 salary -- and it looks like you were making about 50 grand,
14 which isn't so bad for somebody with no dependents; that's
15 pretty good. That's where we want you to be on your way out.
16 And just know this time, too, that we work with people. The
17 federal system has resources. We work with people, so please
18 let us help you help yourself. Okay?

19 Okay. Number 7, I agree with Mr. Legutki. I suspect
20 you do, too, Mr. Sturino, that no alcohol is an imposition that
21 we don't need to have here, and so instead we'll change it to
22 no excessive use of alcohol. Is the government comfortable
23 with that?

24 MR. STURINO: I am, your Honor. I agree with that.

25 THE COURT: Okay. So No. 7 is going to say you shall

1 refrain from any excessive use of alcohol, defined as a blood
2 alcohol concentration greater than .08. And from any use of a
3 narcotic drug or other controlled substance, as defined in
4 Section 102 of the Controlled Substances Act, which is a
5 federal law, without a prescription by a licensed medical
6 practitioner. So that just means you've got to -- used in
7 moderation, okay, Mr. Garcia?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Okay. Most people by the time they get to
10 your age and my age are trying to get moderation. It's the bar
11 fights when you're 22 that we're worried about. Okay?

12 THE DEFENDANT: Yes. Thank you.

13 THE COURT: Number 8, you know about. You shall not
14 possess a firearm, destructive device, or other dangerous
15 weapon.

16 Number 9 is you shall participate at the direction of
17 a probation officer in a substance abuse treatment program,
18 which may include urine testing, up to a maximum of 104 tests
19 per year. And that's really just a way to give you some better
20 coping mechanisms and to make sure you don't get yourself back
21 into trouble. Okay, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Then 14 through 18 are all of the
24 conditions that allow the probation officer to do his or her
25 job.

1 So 14 is you shall not knowingly leave from the
2 federal judicial district where you're being supervised, unless
3 granted permission to leave by the Court or a probation
4 officer. And then it says that the geographic area of our
5 district, which is the Northern District of Illinois, currently
6 consists of the Illinois counties of Cook, DuPage, Grundy,
7 Kane, Kendall, Lake, LaSalle, Will, Boone, Carroll, Dekalb, Jo
8 Davies, Lee, McHenry, Ogle, Stephenson, Whiteside, and
9 Winnebago Counties.

10 Now, as I said before, if you come to me with a job
11 you want to drive a truck or if you want to go all of the way
12 from New York to California and back, if you're in compliance
13 with all of these terms, and it's a legitimate company that
14 pays you legitimate good money, we're very open to that. I
15 would encourage you to think about that since it's something
16 you've been interested in before. So think about that, but
17 just know that you have to ask. But we're pretty liberal about
18 giving you permission as long as you ask and you're in
19 compliance with everything. Okay, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. 15 is you have to report to the
22 probation office in the Federal Judicial District to which
23 you're released from imprisonment, and you have to report to
24 the probation officer at reasonable times as directed by the
25 Court or the probation officer. That's just so they can check

1 in on you, see how you're doing. They might ask you for a
2 paystub or a letter of employment, how's everything going, that
3 kind of stuff, okay?

4 THE DEFENDANT: All right.

5 THE COURT: All right. Number 16. I have sort of a
6 practice of checking only a few boxes here. I think Ms. Kwong
7 knows that from all of our other cases. So we are going to
8 check here, "You shall permit a probation officer to visit you
9 at any reasonable time," and we'll just leave the "at work or
10 other reasonable locations specified by a probation officer,"
11 checked. The rest of them are really backups. And if that
12 turns out to be the best place to visit, it is covered by other
13 locations. But generally speaking, home is the best place, or
14 you could meet at the Starbucks or the McDonald's, or whatever,
15 that's pretty -- but this gives the maximum flexibility without
16 directing anybody necessarily to your school or your work or
17 something like that. Okay? And we are going to permit the
18 probation officer to confiscate any contraband observed in
19 plain view. Okay, Mr. Garcia?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. And then you have to notify the
22 probation officer within 72 hours after becoming aware of any
23 change in residence, employer, or workplace. And absent a
24 constitutional or other legal privilege, you have to answer any
25 questions from the probation officer. And you have to answer

1 truthfully any questions unless you have a constitutional or
2 other legal privilege. Okay, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: And then the last one is you have to
5 notify the probation officer within 72 hours after being
6 arrested, charged with a crime, or questioned by law
7 enforcement. Okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. And then we're on to -- so we have
10 23 here, and that's a search condition here. Any comments on
11 that, Mr. Legutki?

12 MR. LEGUTKI: Number 3 of the special conditions, your
13 Honor?

14 THE COURT: 23 of the discretionary conditions.

15 MR. LEGUTKI: No, sir.

16 THE COURT: Okay. So, Mr. Garcia, No. 23 is you have
17 to submit your person, property, house, residence, or vehicle,
18 or papers or computers to a search conducted by the
19 U.S. Probation Officer. Failure to submit to a search may be
20 grounds for revocation of release. You should warn other
21 occupants that the premises may be subject to searches pursuant
22 to this condition. And an officer may conduct a search
23 pursuant to this condition only when reasonable suspicion
24 exists that the defendant has violated a condition of his
25 supervision, and the area to be searched contains evidence of

1 this violation, and any search must be conducted at a
2 reasonable time in a reasonable manner.

3 So if they get wind that you might be involved in
4 either narcotics or gun activities, they're going to have
5 permission to search your house during this time. Okay?

6 MR. STURINO: And, your Honor -- I'm sorry to
7 interrupt. And, your Honor, I just wanted to add to that
8 condition. I think there's a factual basis to support it as
9 well. These transactions occurred in the driveway of
10 Mr. Garcia's home. Mr. Garcia would exit his home and enter a
11 vehicle, and then do the deals with the source there, so I do
12 think there's a factual basis to support this condition.

13 THE COURT: I appreciate your making a record on that,
14 and that's what I assumed that you were going to say, and the
15 reason I think Mr. McKechnie put this condition in the first
16 place. It's the same thing as some of these other conditions.
17 It's just an extra incentive and motivation for Mr. Garcia to
18 do what he says he want to do, which is to stay out of this and
19 keep himself out of prison. Because at this point, Mr. Garcia,
20 I hope this is the last time you're ever in -- under a
21 sentence, because if there's another one after this, it's
22 almost certainly going to be a life sentence, and we don't want
23 that for you. Okay?

24 MR. LEGUTKI: Your Honor, excuse me, Mr. Sturino, your
25 Honor, to me the critical issue was the reasonableness of this.

1 Mr. Garcia has had difficulties in the past with the
2 probation/state parole. The whole reasonableness needs to be
3 expressed in that, and I think that's covered by your Honor.

4 THE COURT: Yes, I agree with that exactly,
5 Mr. Legutki. You know, I don't know the experience of
6 probation in the state system, but I do know, because our
7 probation officers -- I always say they're out doing the Lord's
8 work because it's hard when you come out of prison. And you
9 know this, Mr. Garcia. It's hard to make the transition. And
10 nothing makes me happier than someone successfully completing
11 their probation. I tell people all of the time when I have
12 them in on probation issues. I always say, "Look, I hope that
13 I only see you one time again, and it's when you finish your
14 probation. I hope you walk through my courtroom doors and sit
15 through my call, and at the end of the call I get to shake your
16 hand," because that's what we want. We want you to succeed,
17 and we work very hard for people to succeed.

18 And we give second chances and third chances because
19 we know it's hard. It's a lot harder to give a second and a
20 third chance when you do something really seriously wrong, but,
21 you know, there are people who are on electronic monitoring and
22 they don't -- they struggle with it at first because they don't
23 realize their back porch is outside the monitor. We don't
24 revoke people for that. We work with them. We have people who
25 have had substance abuse problems their whole life. If they

1 fall off the wagon once, we work with them. We don't revoke
2 them. We want you to succeed. So that's my goal there. Our
3 probation officers aren't out to harass you, they're out to
4 help you.

5 And I'm confident that you will have a better
6 experience in federal probation than you had before, because we
7 want to work with you, okay, and that just reinforces
8 Mr. Legutki's point, which is, they're only going to search if
9 it's reasonable to do so and that's if they have a real
10 suspicion that you're falling off the wagon so to speak. Okay?

11 THE DEFENDANT: Okay.

12 THE COURT: The third condition and the second
13 condition, Mr. Sturino, what do you think of that one?

14 MR. STURINO: Your Honor, this is the one about
15 community service, 20 hours of community service.

16 THE COURT: Yes.

17 MR. STURINO: Your Honor, I do sympathize with
18 Mr. Legutki's objection. My position would be that this could
19 be something that we can revisit when Mr. Garcia is released.
20 The concern, I think, is, you know, if a person does not
21 otherwise have employment and otherwise keeping himself busy,
22 bad things happen. I think that's the point of 20 hours of
23 community service. But if Mr. Garcia is not in good health or
24 not physically able to do community service, then I would fully
25 agree that he should not be doing so. I don't have a strong

1 position, your Honor, but I guess my feeling is this is
2 something that can be revisited when he is released from
3 custody.

4 THE COURT: Okay. Let me tell you my case on this
5 one, which is really sometimes it is an opportunity for people
6 because an internship, if people like you it can lead to a
7 paying job or volunteer work, but I think Mr. Garcia's at least
8 going to be 70 no matter what happens here, and so I'm inclined
9 to think it's unlikely that we would ever put him into
10 community service, but it may depend on the circumstances, if
11 there's, you know, an opportunity to volunteer somewhere that
12 may turn into a paying job. I just don't know. I am very
13 sympathetic to your point which is once you're past the
14 retirement age, pressing you into service is a hard thing to
15 do. But if he doesn't have any other way to support himself,
16 there's going to have to be something to move him in that
17 direction. So I don't feel strongly about it either.

18 Any further thoughts you have, Mr. Legutki?

19 MR. LEGUTKI: Yes, your Honor. I am older than all of
20 you, and at 63, if someone told me I had to do 20 hours of
21 community service, it would be a burden. I mean, it's
22 different in your 50s and your 40s. And I hope I will still be
23 complaining about these things when I'm 70, but I think it
24 makes a big difference, your Honor. I think there's a time
25 value in this that cannot be quantified, but yet needs to be

1 recognized. We don't know who the probation officer is going
2 to be at that time. Your Honor, I hope you're still on the
3 bench making great rulings at the end of the time, but we don't
4 know. I would hate to have this be a catchall, oh, let's trip
5 him up anyhow. Not that you would do it or the current
6 probation officer would do it. I'm just trying to think ahead.
7 I just don't think this is a reasonable condition to impose on
8 Mr. Garcia when he gets out.

9 THE COURT: Okay. You win.

10 Discretionary Condition No. 4 is already there. It
11 requires him to seek employment. You know, I don't know what
12 the circumstances are going to be. But I'm not going to -- I
13 don't feel strongly about it mostly because of the realities of
14 this situation, and I do think it's unlikely that it would ever
15 come into play. If I'm still around on the bench at this time,
16 we'll see. I don't know. When I turn 65, it's going to be
17 awfully tempting to go do something else where I could get paid
18 10 or 20 times what I get paid right here.

19 MR. LEGUTKI: I've got my application in for that job.

20 THE COURT: I left it 13 years ago. So my wife always
21 reminds me that between the age of 42 and 55 I've minimized my
22 income potential by about \$40 million, but that's okay.

23 We'll waive that one. I'll use No. 4 if I'm still
24 making all of the good rulings you're hoping for to make sure
25 that Mr. Garcia is doing the best he can in the circumstances.

1 So we'll leave No. 3 out, Kelly, and we'll move on to the next
2 one, which is -- it's the one about the credit charges.

3 Now -- here, I'll give you a preview of coming
4 attractions here. The only financial penalty in this case is
5 going to be the \$600 special assessment. There will be no
6 fine. The potential fine in this case is a staggering amount
7 of money. But Mr. Garcia doesn't have the wherewithal to pay
8 any fine at all. So we're only talking about \$600 here, and
9 it's going to be imposed at 10 percent of net monthly income.
10 So it makes it almost impossible for Mr. Garcia not to be in
11 compliance. We're only going to shave off a few bucks a month.
12 And in the space of a year, if he has any job at all, he'll be
13 able to pay off the \$600.

14 PROBATION OFFICER: Excuse me, your Honor. I'm sorry
15 for interrupting.

16 There -- I think there's an issue of buy money.

17 THE COURT: Oh, there is buy money. Oh, okay. I
18 missed that. Thank you for reminding me.

19 PROBATION OFFICER: Yes, that's Special Condition
20 No. 12.

21 THE COURT: There it is. \$7,600. So, \$8,200. Well,
22 that's more money, but, you know, I've had restitution where
23 it's been millions of dollars in restitution owed for some
24 massive fraud. So even at \$7,600 at 10 percent of your net
25 monthly income, it's not going to be an impossible thing to pay

1 off over time. We're only going to take 10 percent of your net
2 monthly income. And so as long as you're letting the
3 government take 10 percent of your net monthly income, you'll
4 be in compliance with the financial conditions imposed by the
5 judgment, in which case you can incur new credit charges. So I
6 don't think there's too much to object to in No. 5 here because
7 the reality is it's not very hard to stay in compliance,
8 whatever it would be, 20 bucks, 40 bucks a month, is a small
9 amount. So I'm going to overrule the objection to No. 5 just
10 to make sure.

11 The problem I have sometimes is people blow off the
12 restitution, and that's not right. I have no reason to think
13 you're going to do that, Mr. Garcia, because you want to be in
14 compliance. We're not asking much here. And if you're in
15 compliance, we might even let you go early from these
16 conditions. So it's a small price to pay to perhaps get your
17 full freedom back sooner. So No. 5 is you shall not incur new
18 credit charges or open additional lines of credit without the
19 approval of the probation officer, unless you are in compliance
20 with the financial obligations imposed by the judgment. And
21 those obligations will be \$600 special assessment and the
22 \$7,600 in buy money. We're talking about \$8,200 total.

23 Number 6 is you shall provide the probation officer
24 access to any requested financial information necessary to
25 monitor compliance with the conditions of supervision. That's

1 probably a pay stub or a letter from your employer or a tax
2 return. Some way that they know what you're making so they can
3 collect that 10 percent. Okay, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. And then we're down to No. 10,
6 which is the 10 percent. So you have to pay to the clerk of
7 the court any financial obligation ordered that remains unpaid
8 at the commencement of the term of supervised release, at a
9 rate of not less than 10 percent of the total of your gross
10 earnings, minus federal and state income tax withholding, so
11 once your employer takes your taxes out, whatever that gross
12 number is that's left, 10 percent of that goes to the
13 government until you pay of the 8200. Okay, Mr. Garcia?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Number 11, you shall not enter into any
16 agreement to act as an informer or special agent of law
17 enforcement without the permission of the Court. So if anybody
18 approaches you about that, you have to come and talk to me
19 about that first. Okay?

20 THE DEFENDANT: All right.

21 THE COURT: Okay. And the last one is you have to pay
22 to the Clerk of the Court \$7600 as repayment for the government
23 funds you received during the investigation, and those funds
24 will be remitted to the ATF, which I believe is the government
25 agency that advanced those funds listed here in the PSR. Okay,

1 Mr. Garcia?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Five years on that, and if you're
4 doing well after two and a half, come and ask me to let you go
5 for the other two and a half, okay?

6 THE DEFENDANT: All right.

7 THE COURT: Okay. So I've got to make my statement
8 now and go through the 3553(a) factors, so if you'll bear with
9 me for a few minutes.

10 I think it was April 3rd of 2020 that I entered the
11 order finding the defendant guilty on all six counts in this
12 case. There were five narcotics counts and Count Four is the
13 gun count, and that's all laid out in the PSR. And then so I
14 asked for the PSR to be prepared to help with sentencing. And
15 as I have already done the guideline findings for you guys, but
16 my recollection is that the total offense level is 35, a
17 Criminal History of VI. That results in an advisory guideline
18 range of 292 to 365 months.

19 The statutory max for Counts Two through Five is life.
20 For Counts One and Six, it's 40 years. The mandatory minimum
21 for Count Four is 15 years. Counts Two, Three, and Five is 10
22 years. Counts One and Six is 5 years. Fortunately for
23 Mr. Garcia, those do not stack on top of each other because
24 that's a lot of mandatory sentences. So it's 15 years is the
25 mandatory minimum in this case.

1 The supervised release on all but the gun count, the
2 statutory max is life. I have already gone through the
3 minimums and the guidelines for that, so I'm pretty much tied
4 by the minimums to give a five-year period of supervised
5 release, with all of the periods running concurrently. The
6 fine, as I said before, is astronomical. Counts Two, Three,
7 and Five contain a maximum fine of 10 million. Counts One and
8 Six is 5,000,000. Count Four, it's only 250,000.

9 The guideline for the fine is between 20,000 and
10 10,000,000. For the reasons I previously stated, there will be
11 no fine. The special assessment of \$600, which is a hundred
12 dollars a count, is mandatory, and you add that to the buy
13 money and that's where we get the 8200.

14 My job as a sentencing judge is to impose a sentence
15 that is sufficient but not greater than necessary to serve all
16 of the Section 3553(a) purposes. So I would like to make a few
17 comments for the record about how I see those factors applying
18 in this case.

19 We start out with the nature and circumstances of the
20 offense. As Mr. Sturino pointed out, trafficking in firearms
21 and very potent narcotics is a very dangerous thing for the
22 community. These drugs are so potent, they had to be
23 double-bagged with special instructions for handling. And, you
24 know, obviously, if you buy this stuff, you're trusting the
25 person who's distributing it to give you something that isn't

1 going to kill you, and that doesn't always happen. People also
2 get addicted. It creates a lot of bad secondary effects in the
3 community, and that's why it's illegal. It is a serious
4 offense.

5 And when we go to the history and characteristics of
6 the defendant. So I'm going to start with the bad and turn to
7 the good here. Okay?

8 The bad, it's a bad criminal history. There's a lot
9 of violence. There's people being shot. I understand from
10 Mr. Garcia's PSR, and also from his mother's letter, that he
11 was a gunshot victim as well and it was very serious. And he
12 barely made it, according to his mother's letter. You know,
13 that's a very difficult life, and a lot of people don't make it
14 living that life, and Mr. Garcia was pretty close to being one
15 of those people who didn't make it. So it's a serious record.

16 And Mr. Sturino pointed out there's not a lot of
17 crimes in number here. I've seen much longer records in that
18 respect, but there was one sentence of 40 years, in which he
19 served 20. Well, if you're going to be in IDOC for 20 years,
20 it's going to take you out of commission to commit further
21 crimes.

22 You know, the unfortunate piece here, really, is that
23 those glimmers of hope that Mr. Legutki referred to and that
24 Mr. Garcia's referred to and that his mother gave in great
25 detail in her letter didn't stick. That's the problem here is

1 that there was a chance when Mr. Garcia was in his early 50s to
2 turn this around after he was paroled in 2012. There is a
3 history of some gainful employment. I can't say that for all
4 of my armed career offenders, so that is a positive. But, you
5 know, the tapes I listened to at the trial actually are
6 concerning in the sense that there wasn't a lot of resistance
7 there. There was a great detail of knowledge about where you
8 can get drugs and where you can get guns in the community, of
9 great variety that was being offered for sale. That's
10 concerning.

11 And that leads me to the other 3553(a) factors. Just
12 punishment and deterrence, and those are troubling, too,
13 because if 20 years in IDOC doesn't deter you, I'm not sure
14 what could. People don't like IDOC. If you had a choice
15 between IDOC and federal, you would take federal every time.
16 IDOC is harder time. So that's all concerning to me.

17 I am cognizant of Mr. Garcia's age, and I do think
18 that that is a factor that I can take into account that will
19 reduce his sentence. I have to look at unwarranted sentencing
20 disparities, and this is something that Mr. Sturino averted to
21 as well. If Mr. Garcia had toted up this record by age 35, and
22 some people do, it would be an argument for a longer sentence,
23 not a shorter sentence because somebody who's engaged in that
24 level of crime and that level of violent crime may be somebody
25 who needs to be taken out of society for a legitimate guideline

1 sentence here, like 25 years. That's the guideline sentence
2 here, 24 and a third years.

3 I think Mr. Garcia's age actually cuts against that in
4 this circumstance, because he's -- you know, he's 60 now. He
5 turned 60 a month ago. And so I think that's a factor that I
6 will take into account, and take that into account in his
7 favor.

8 The other things I would say in his favor, really, are
9 those glimmers, and the idea that he can do this. I think
10 you're going to have to resist the lure to go back to, as
11 you've said, people who have helped you out before, because
12 they really haven't helped you out in a way that has netted you
13 out very well. I mean, you've spent way too much time of your
14 life in prison. And the sentence in this case is just going to
15 increase the percentage of your life that you spend in prison.
16 But I can't see giving you a guideline sentence here, even
17 though but for your age and those glimmers of hope, it would be
18 completely justifiable to give you a guideline sentence here
19 because this record is a really disturbing record with a lot of
20 violence and people getting shot. That's really dangerous and
21 scary.

22 But, you know, Mr. Garcia, I know you have got it in
23 you. I know you do. You just have to work with us on the
24 other end of the sentence. But I can't blind my eye to
25 everything that Mr. Sturino said as well about the record.

1 There's only so much of a break I can give you for your age and
2 those glimmers of hope. And for my own -- I don't know you any
3 better than Mr. Sturino does, except that you've been coming in
4 my courtroom for five years, and this is where I'm going to
5 give you credit for acceptance of responsibility, too.

6 You wanted to go to trial to test a legal question.
7 But you admitted to all of the conduct, and the question was is
8 there a legal defense to this conduct. I give you credit for
9 that. You could have made this a lot more difficult for the
10 government. In the end would they have convicted you, yeah, I
11 think they would have convicted you, but you could have made
12 this a lot more difficult. You know, I have hope for your
13 future, Mr. Garcia, if you work with us. You have got to work
14 with us. You have to take advantage of what we're going to
15 offer you, which is a probation officer who will actually check
16 in on you and be positive with you, and try to get you on the
17 right path. And if you need help finding employment, if you
18 need flexibility, as you said before, if it turns out what you
19 really want to do is drive a truck across the state lines,
20 we'll work with you on that. Okay?

21 THE DEFENDANT: Okay.

22 THE COURT: So, Mr. Legutki, have I addressed all of
23 your principal arguments?

24 MR. LEGUTKI: Yes, sir, you have. Thank you.

25 THE COURT: Mr. Sturino, have I addressed all of your

1 principal arguments as well?

2 MR. STURINO: Yes, your Honor. I have nothing else.

3 THE COURT: Okay. Very good. So the question in this
4 case really comes down to how much of a discount can I give you
5 off of the guidelines and still give you a sentence that is
6 sufficient but not greater than necessary. And in my judgment,
7 and pursuant to the Sentencing Reform Act of 1984, the sentence
8 is going to be 210 months, which is 82 months off the low end
9 of the guidelines, but still a little bit above the mandatory
10 minimum, and that will be on Count Four, concurrent with all of
11 the other counts. So it's one sentence of 210 months. Five
12 years of supervised release, basically giving you the mandatory
13 minimum on all of the counts for supervised release, and the
14 minimum financial imposition I can give you as well.

15 And so the only other thing I know that I have to
16 cover is two things. One is, Mr. Legutki, if you all have a
17 recommendation for a facility, I would be happy to recommend
18 that.

19 MR. LEGUTKI: Your Honor, somewhere -- Mr. Garcia, as
20 evidenced by his letters submitted by his mom, family members
21 and significant other, closest and nearest Chicago -- excuse
22 me -- as close to Chicago as possible would be the request.

23 THE COURT: Do you want me to recommend the RDAP? He
24 may be ineligible based on the conviction, but do you want me
25 to recommend it anyway?

1 MR. LEGUTKI: Well, your Honor, that was in my notes,
2 actually. Given the fact that there is drug and alcohol
3 counseling that is part of supervised release conditions that
4 was talked about extensively during the sentencing, I would ask
5 that RDAP be recommended by this Court.

6 THE COURT: Okay. And I'll be happy to do that. So,
7 Mr. Garcia, I'm going to recommend you for the Residential Drug
8 Abuse Program. If they'll let you in it and you complete it
9 successfully, you can get out sooner. It will give you a
10 reduction in your sentence. And I think it might help you. I
11 read your mom's letter and that's really what triggered in my
12 mind to suggest this, because I think your mom feels confident
13 that you can stay sober, and if you do, it will enhance the
14 likelihood that you'll be able to be successful. So are you
15 okay with that, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. So I will put the facility closest
18 to Chicago that offers the RDAP.

19 And, then, Mr. Garcia, I have to advise you that if
20 you want to appeal either the conviction or the sentence, you
21 would have to do that within 14 days of the date the judgment
22 and conviction order appears on the docket. That probably
23 won't be until next week because every time I give a sentence
24 that's below the guidelines, I have to write up a statement of
25 reasons for why I did that. So it's going to take me a couple

1 of days for me to get that typed up and sent off to Carolyn
2 because we're not coming to the office these days. But you
3 have 14 days from that date to file a Notice of Appeal if you
4 wish to do so. Okay, sir?

5 THE DEFENDANT: Yes, sir.

6 MR. LEGUTKI: Your Honor, if I might ask, just from
7 personal experience, when the J&C is issued, sometimes it is
8 backdated to today. I've had this experience before over the
9 years. Let's say it comes out in a week, it's backdated to
10 today. If it's just dated the day it comes out, it would be
11 helpful.

12 THE COURT: Yes. We certainly will date it from the
13 day it comes out, especially because of the Thanksgiving
14 holiday, and you need to have a chance to consult with
15 Mr. Garcia on whether he wishes to appeal. So we'll make sure
16 we put the date that it's actually on the docket, and then you
17 will get an electronic notice of that, okay?

18 MR. LEGUTKI: Just one less headache to deal with,
19 Judge.

20 THE COURT: Yes, I agree. I know how that can happen
21 because sometimes the judges aren't careful about not signing
22 the right date on it because they know the date that they
23 sentenced, but they don't know the date it's being processed,
24 but we'll make sure we are careful about that.

25 MR. LEGUTKI: Thank you, sir.

1 THE COURT: Okay. Very good. Anything else for the
2 defense today, Mr. Legutki?

3 MR. LEGUTKI: No, sir. Thank you.

4 THE COURT: Kelly, did I leave anything out?

5 PROBATION OFFICER: I do not believe so, your Honor.

6 THE COURT: Okay. Thank you.

7 Mr. Sturino, anything else for the government?

8 MR. STURINO: No, your Honor. Thank you very much.

9 THE COURT: Very well. Okay. Mr. Garcia, I wish you
10 good luck, and I hope I am still around here and you're still
11 around here, too, and I can work with you to make sure this is
12 the last time you ever get sentenced in a courthouse. Okay?

13 THE DEFENDANT: Okay. Thank you, your Honor.

14 THE COURT: Okay. Thank you, everybody. Take care.

15 MR. LEGUTKI: Thank you.

16 MR. STURINO: Thank you.

17 THE COURT: Bye-bye.

18 (Proceedings concluded.)

19 * * * * *

20 C E R T I F I C A T E

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23 /s/Kristin M. Ashenhurst, CSR, RDR, CRR February 9, 2021
24 Kristin M. Ashenhurst, CSR, RDR, CRR Date
25 Federal Official Court Reporter